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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. CLARENCE ANDRAE SIMPSON, Defendant and Appellant.	B266362 (Los Angeles County Super. Ct. No. PA069961)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed in part, reversed in part, and remanded.

Tracey A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Clarence Andrae Simpson appeals from a judgment which sentences him to 13 years in state prison for assault with a deadly weapon. On appeal, Simpson challenges the sentencing enhancements he received as a result of the trial court's true finding as to his prior conviction for robbery in Washington. He contends Washington's robbery statute is broader than California's. Thus, the prosecution failed to prove his prior conviction in Washington qualifies as a prior strike or serious felony under California law. We agree and remand the matter for a limited retrial on the issue. We reject Simpson's remaining challenges to the judgment. Specifically, that the trial court erred by failing to comply with the jury's read back request and by failing to adjourn the criminal proceedings for a fourth time to address Simpson's competence.

FACTS

On January 31, 2011, Christopher Gudino, Nicholas Schneider, and Anthony DaSilva were playing basketball at Petit Park in Los Angeles County. Also at the park were 20-30 "neighborhood gangsters." Simpson approached the three men several times, asking whether they were trying to fight him or "jump" him. At one point, Simpson pulled two screwdrivers from his pocket. The last time he approached them, he accused them of taking his hat. Simpson was chased away each time.

At approximately 9:00 p.m., the three men observed Simpson and a woman drive up in a white car and park near the picnic tables. The woman got out of the car to walk a dog. When Gudino, Schneider and DaSilva left the park to walk home shortly afterwards, they were attacked by Simpson, who punched Gudino in the face, hitting him above his right eye. Gudino tried to run away, but Simpson chased after him. When Gudino slipped and fell, Simpson stabbed him in the shoulder and the neck with a screwdriver. He then ran away. All three men identified Simpson from a photographic lineup.

He was arrested and the police recovered two screwdrivers from the front pocket of the hoodie he was wearing. No evidence of blood was detected on either screwdriver. Both Simpson's girlfriend and his mother observed a deep cut to Simpson's face the night of January 31, 2011.

Simpson was charged in count 1 with mayhem, in violation of Penal Code[1] section 203 and in counts 2 and 3 with assault with a deadly weapon in violation of section 245. It was further alleged as to count 2 that Simpson inflicted great bodily injury. As to all three counts, it was alleged he personally used a deadly and dangerous weapon. (§ 12022, subd. (b)(2)). In addition, the information alleged he suffered a prior conviction in the state of Washington, which qualified both as a strike and as a prior serious felony. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667 subd. (a)(1).) Proceedings against Simpson were suspended three times when the trial court deemed him not competent to stand trial and ordered him to Patton State Hospital. Simpson was ultimately found competent on June 4, 2015.

Trial began July 31, 2015. Because Simpson refused to bathe, which resulted in an overpowering body odor, the trial court found he voluntarily absented himself from the proceedings under section 1043. Trial lasted two days, with opening arguments and testimony presented on August 4, 2015, and closing arguments and jury instructions given on August 5, 2015. After several hours of deliberations, the jury advised the trial court it was at an impasse. The trial court refused to declare a mistrial and ordered the jury back for further deliberations the following day. After several requests for readback of the testimony, the jury returned a guilty verdict on the assault with a deadly weapon count and found the dangerous weapon allegation to be true.[2] Simpson was sentenced to a total of 13 years in state prison, comprised of the high term of four years on count 3, doubled to eight years for the prior strike conviction, plus five years for the prior serious felony.

Simpson timely appealed the judgment.

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[1] All further section references are to the Penal Code unless otherwise specified.

[2] On August 3, 2015, the trial court dismissed counts 1 and 2, leaving a single count of assault with a deadly weapon remaining.

DISCUSSION

I. Conduct Enhancement

Simpson challenges the trial court's finding that the prior conviction qualified as a prior strike and as a serious felony prior. Simpson contends the Washington prior is neither a strike nor a serious felony prior under California law because the Washington statute defining robbery includes conduct that would not constitute robbery under California law. Simpson points to three differences between California and Washington law: "First, unlike the California law of robbery, the Washington statute allows a robbery to be predicated [on] forms of theft other than larceny, e.g., on theft by false pretenses. California does not. Second, Washington law does not require that the robbery victim have a possessory interest in the property taken, whereas California law unmistakably does. Third, since 1989, Washington law has not required intent to permanently deprive the victim of the subject property; the robbery statute thus embraces takings that would not be a robbery under Penal Code, section 211." We need not address all of the differences, however, because we find one difference sufficient to warrant a retrial of the prior conviction allegations: the intent elements are different under California and Washington law.

A. The Prior Conviction

The information alleged Simpson suffered a prior conviction for robbery in the state of Washington. Simpson waived a jury trial on the prior conviction. At the bifurcated trial, a multi-page form entitled, "Judgment and Sentence Felony" from the Superior Court of Washington for King County was admitted into evidence. It showed Simpson plead guilty in 2008 to first degree robbery pursuant to Revised Code of Washington Annotated sections 9A.56.200(1)(a)(ii) and 9A.56.190. He was sentenced to 31 months. Appended to the judgment were various orders not relevant to this appeal and fingerprint cards. The prosecution presented testimony from a fingerprint expert who opined Simpson's fingerprints matched those in the Washington judgment and sentence documents.

The trial court found the conviction qualified as a strike and as a serious felony prior under California law. Accordingly, Simpson's four-year sentence was doubled under sections 667, subdivisions (b)-(i) and 1170.12, subdivisions (a)-(d). In addition, five years was added to the sentence pursuant to section 667, subdivision (a)(1).

B. Relevant Authority

"To qualify as a serious felony, a conviction from another jurisdiction must involve conduct that would qualify as a serious felony in California." (*People v. Avery* (2002) 27 Cal.4th 49, 53.) To determine whether a conviction from another jurisdiction qualifies as a serious or violent felony in California, the court must correspond the elements of the respective statutes. (*Descamps v. United States* (2013) __U.S.__ [133 S.Ct. 2276, 2285] (*Descamps*); *People v. McGee* (2006) 38 Cal.4th 682, 706 (*McGee*).)

"[W]hen the elements of a prior conviction do not necessarily establish that it is a serious or violent felony under California law (and, thus, a strike), the court may not under the Sixth Amendment '"make a disputed" determination "about what the defendant and state judge must have understood as the factual basis of the prior plea," or what the jury in a prior trial must have accepted as the theory of the crime.' [Citation.]" (*People v. Saez* (2015) 237 Cal.App.4th 1177, 1207-1208.) However, the trial court may undertake a limited review of the record of conviction where the offense at issue is divisible, that is, where it "sets out one or more elements of the offense in the alternative—for example, stating that burglary involves entry into a building *or* an automobile." (*Descamps*, *supra*, at p. 2281.) Under those circumstances, a trial court may consider the record of conviction, including indictments, jury instructions, a plea colloquy, and a plea agreement, to determine which alternative element of the offense was pled. (*Ibid.*; *People v. McCaw* (2016) 1 Cal.App.5th 471, 478.)

The prosecution must prove all elements of a sentence enhancement beyond a reasonable doubt. (*People v. Miles* (2008) 43 Cal.4th 1074, 1082 (*Miles*).) When the record does not disclose the facts of the prior offense, a presumption arises that the prior conviction was for the least offense punishable under the law of the convicting state. (*People v. Mumm* (2002) 98 Cal.App.4th 812, 816 (*Mumm*).)

"On review, we examine the record in the light most favorable to the judgment to ascertain whether it is supported by substantial evidence. In other words, we determine whether a rational trier of fact could have found that the prosecution sustained its burden of proving the elements of the sentence enhancement beyond a reasonable doubt." (*Miles, supra*, 43 Cal.4th at p. 1083.) Additionally, we review legal questions de novo. (*People v. Seijas* (2005) 36 Cal.4th 291, 304.)

C. Analysis

To start, we compare the elements of the respective statutes. Robbery is a strike offense under California law. (§ 1192.7, subd. (c)(19).) The California Penal Code defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.)

In Washington, "[a] person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear." (Rev. Code of Wash., § 9A.56.190.) Further, "[a] person is guilty of robbery in the first degree if: (a) In the commission of a robbery or of immediate flight therefrom, he or she: . . . [¶] . . . (ii) Displays what appears to be a firearm or other deadly weapon[.]" (Rev. Code of Wash., § 9A.56.200, subd. (1)(a)(ii).)

Although the statutes for robbery in both states are substantially similar, they include a crucial difference. The California Supreme Court has held robbery requires the intent to permanently deprive the owner of possession of the property. (*People v. Avery* (2002) 27 Cal.4th 49, 54.) The Washington Supreme Court, on the other hand, has held

the intent to permanently deprive is not an element of the crime of robbery. (*State v. Komok* (Wash. 1989) 783 P.2d 1061, 1063-1064 (*Komok*).)

The Attorney General argues the intent to permanently deprive is an element of robbery under Washington law, relying on *State v. Ralph* (2013) 175 Wn. App. 814, 824-825 (*Ralph*). In *Ralph*, the Washington Court of Appeals held, "[r]obbery also includes the nonstatutory element of specific intent to steal, which our Supreme Court has held is the equivalent to specific intent to deprive the victim of his or her property permanently." For this proposition, *Ralph* relied on *State v. Sublett* (2012) 176 Wn.2d 58, 88 (*Sublett*), which in turn cited to *In re Pers. Restraint of Lavery* (2005) 154 Wn.2d 249, 255 (*Lavery*). A close reading of *Sublett* and *Lavery* show they both held the crime of robbery in Washington requires specific intent to steal as an essential, nonstatutory element. (*Sublett, supra,* at p. 88; *Lavery*, *supra*, at pp. 255-256.) Neither, however, equated a specific intent to steal with a specific intent to permanently deprive the victim of his or her property. The Attorney General does not address the holding in *Komok* and it does not appear *Komok* has been overruled by *Ralph*, *Sublett* or *Lavery.*

Under *Komok,* the Washington statute is broader than the California statute on robbery; the elements of robbery under Washington law do not correspond to the elements of robbery as defined in California. We accordingly presume the prior conviction was for the least offense punishable under the law and the record is insufficient to prove Simpson suffered a prior robbery conviction as it is defined under California law. (*People v. Mumm, supra*, 98 Cal.App.4th at p. 816.) Thus, we must reverse the true finding as to the prior conviction in Washington.

A retrial of a strike allegation after reversal for insufficient evidence is permissible. (*People v. Barragan* (2004) 32 Cal.4th 236, 239; see also *Monge v. California* (1998) 524 U.S. 721, 733.) We remand for that purpose. Upon remand,

we caution the trial court to carefully consider the issues raised in this appeal, namely, the differences between California and Washington law on robbery.[3]

II. Jury Questions

A. Proceedings Below

The jury began its deliberations minutes before the noon recess on August 5, 2015. At 2:55 p.m., the jurors asked for readback of "what the defense attorney said in closing arguments relative to what Mr. Simpson did." The trial court advised them "[s]tatements made by an attorney in closing arguments are not evidence (please see instruction 222

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[3] We considered a potential alternative basis for the Washington conviction to qualify as a serious or violent felony under California law—Simpson's conviction for first degree robbery, which includes the display of "what appears to be a firearm or other deadly weapon." Simpson was convicted of first degree robbery, a class A felony. (Rev. Code Wash. § 9A.56.200, subd. (2).) In Washington, "[a] person is guilty of robbery in the first degree if: . . . [¶] [i]n the commission of a robbery or of immediate flight therefrom, he or she: . . . [¶] . . . [d]isplays what appears to be a firearm or other deadly weapon." (Rev. Code Wash., § 9A.56.200, subd. (1)(a)(ii).) Under section 1192.7, subdivision (c)(23), a serious felony includes "any felony in which the defendant personally used a dangerous or deadly weapon." Someone personally uses a deadly or dangerous weapon if he displays the weapon in a menacing manner. (*People v. Bland* (1995) 10 Cal.4th 991, 997; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319; see also § 1203.06, subd. (b)(3).) Thus, Simpson's conviction might qualify as a serious prior felony under subdivision (c)(23) of section 1192.7.

Again, however, we find the evidence wanting and caution the trial court to undertake a careful analysis of this basis for finding the conduct enhancement true as "it appears the [Washington] Legislature intended to proscribe conduct in the course of a robbery which leads the victim to believe the robber is armed with a deadly weapon, whether the weapon is actually loaded and operable or not, and whether the weapon is real or toy. This is because the statute merely requires that the accused 'display' what 'appears' to be a firearm or deadly weapon." (*State v. Henderson* (1983) 34 Wn.App. 865, 868.) In California, on the other hand, a deadly weapon must be an object, instrument, or weapon used so as to be capable of producing, and likely to produce, death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029.) Thus, California does not include within subdivision (c)(23) any toys which appear to be a firearm or deadly weapon but are not capable of producing or likely to produce death or great bodily injury. We did not find the evidence sufficient on this basis because it is unclear from the record whether Simpson's conviction for first degree robbery involved a firearm or deadly weapon capable of producing or likely to produce great bodily injury or death.

below).[4] As such, the court cannot provide the requested read back of the defense attorney's closing argument." The jury then notified the trial court at 4:05 p.m. that they were at an impasse. Noting the jury had been deliberating a "minimal" amount of time, the trial court read the jury a modified CALCRIM No. 3551 instruction[5] and instructed them to return the next day for further deliberations.

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[4] CALCRIM No. 222 provides: "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence. Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses' answers are evidence.

[5] The trial court instructed the jury as follows: "Sometimes juries that have had difficulty reaching a verdict are able to resume deliberations and successfully reach a verdict. Your goal as jurors should be to reach a fair and impartial verdict, if you are able to do so, based solely on the evidence presented and without regard for the consequences of your verdict, regardless of how long it takes to do so. [¶] Please consider the following suggestions: do not hesitate to re-examine your own views. Fair and effective jury deliberations require a frank and forthright exchange of views. [¶] Each of you must decide the case for yourself and form your own individual opinion after you have fully and completely considered all of the evidence with your fellow jurors. [¶] It is your duty as jurors to deliberate with the goal of reaching a verdict, if you can do so, without surrendering your individual judgment. [¶] Do not change your position just because it differs from that of other jurors or just because you or other jurors want to reach a verdict. Both the People and the Defendant are entitled to the individual judgment of each juror. [¶] It is up to you to decide how to conduct your deliberations. You may want to consider new approaches in order to get a fresh perspective. [¶] If there is anything this court can do to assist you in performing your duties, please do not hesitate to let me know. At your request, you can be provided with readback of testimony, further explanation of legal concepts, further instructions or further argument by the attorneys on any point or topic you request. [¶] Let me know whether I can do anything to help you further, such as give additional instructions or clarify instructions that I have already given you. [¶] The integrity of a trial requires that jurors at all times during their deliberations conduct themselves as required by the instructions. [¶] The decision the jury renders must be based on the facts and the law. You must determine what facts have been proved by the evidence received in the trial and not from any other source. A fact is something proved by the evidence."

The following morning at 10:05 a.m., the jury issued a request as follows:

"Copies of the testimonies of everyone used as an eye witness. Copies of everything said about the screwdrivers and anything to do with DNA. Clarification as to which DNA they're talking about (Mr. Simpsons fingerprints? Chris' Blood? They didn't specify). If possible, can you provide us with a clear line-up photo rather than the one shown prior (the quality was terrible).

"Can we have the testimonies of Chris, Nick & Anthony read back to us?

"Provide clarification on who's [*sic*] DNA was not found referenced during testimony of the detective? Also, what trace evidence was referenced?

"Can you provide a clear line up (six-pack) photos?"

The trial court responded: "The request submitted by the jury essentially is asking for the entire trial to be read back, which is an impossible and arduous task. If possible, please narrow your request and be specific what testimony the jury is looking for. [¶] The detective's testimony regarding the presence or absence of DNA, fingerprints or trace evidence, will be provided to the extent it exists. [¶] With respect to the photographic lineup, the jury can only consider what has been admitted into evidence, which has been provided to the jury. [¶] If the jury would like further argument by the attorneys on any issue, please so indicate."

At 10:40 a.m., the jury requested "a re-reading of the testimony of Chris from the time that they were leaving the picnic tables to the time of Clarence running away." That testimony was provided by the court reporter at 11:11 a.m. At 11:37 a.m., the jury announced it had reached a verdict.

B. The Trial Court Properly Attempted to Narrow The Jury's Broad Request

Under section 1138,[6] a jury is entitled to rehear testimony and instructions upon request during deliberations. Section 1138 is primarily concerned with the jury's right to

[6] Penal Code section 1138 states, "After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct

be "apprised of the evidence upon which they are sworn conscientiously to act." (*People v. Butler* (1975) 47 Cal.App.3d 273, 283-284 (*Butler).*) A violation of section 1138 also implicates a defendant's right to a fair trial. (*People v. Frye* (1998) 18 Cal.4th 894, 1007; disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

Simpson argues the trial court's error mirrors those found in *Butler, supra,* 47 Cal.App.3d 273 and *People v. Henderson* (1935) 4 Cal.2d 188 (*Henderson*). While both cases are instructive on this issue, we disagree the facts are the same. In *Butler,* the trial court refused the jury's request to have the testimony of five witnesses re-read because it would take at least half a day to do so. Instead, the trial court advised the jury to "'go back into the jury room and do your very best to arrive at a verdict *based on the information that you have*.'" (*Butler,* at p. 279.) The Court of Appeal found the trial court's complete refusal to comply with the jury's request to be prejudicial error.

The court reasoned, "No attempt was made by the court to attempt a narrowing down to portions of the particular witnesses' testimony in order to satisfy the jury's request [citation] or to 'pinpoint' what the jurors wanted [citation]. Had such attempts been made, successfully, it is at least conceivable that the court and counsel, acting together, might have been able to reach stipulations as to the testimony or to prepare a summary for the jury, as was done in *People v. Dreyer* (1945) 71 Cal.App.2d 181 [162 P.2d 468], where compliance with a jury request would have required four hours to read the requested testimony. Absent strong supervision by the trial court, and in the face of an outright rejection of the jury's request, the appellate court is put in that position that we cannot say, or even speculate, what effect the rereading of the requested testimony would have had or what effect was created by the failure to reread that testimony." (*Butler, supra,* 47 Cal.App.3d at p. 281.) In *Henderson, supra,* 4 Cal.2d at pp. 193-194,

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them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called."

the trial court read back only some of the testimony requested by the jury, but omitted other testimony relevant to the issue about which the jury inquired.

Unlike in *Butler*, the trial court here did not refuse entirely to re-read the testimony. Nor did it fail to read back all of the testimony requested, as in *Henderson.* Instead, it complied with the holding in *Butler* by attempting to narrow down or pinpoint the portions of testimony the jury sought. The trial court also offered further argument by the attorneys on any issue and provided the detective's testimony on DNA, fingerprint, and trace evidence. Less than 40 minutes after the trial court's comments, the jury complied with the trial court's suggestion to narrow its request and asked for a readback of only one witness's testimony. The trial court did not err by complying with the jury's readback request of this witness's testimony. Neither is there any contention it omitted any testimony relevant to the jury's request.

III. Competency To Stand Trial

A. Proceedings Below

Over the course of four years, the criminal proceedings against Simpson were suspended three times because the trial court entertained a doubt as to his competency.[7] Each time, he was ordered to Patton State Hospital, which issued him a certification of competency within one to three months of his commitment. When jury trial began on July 31, 2015, defense counsel again indicated a doubt as to his competency because, when Simpson was asked to consider the prosecution's offer of a 12-year sentence that morning, "his verbal responses were just complete gibberish. They just didn't make any sense based on the case." Additionally, he told his attorney he had never been to Washington, which was not true.

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[7] Criminal proceedings against Simpson were suspended on November 2, 2011, and Simpson was deemed not competent on August 15, 2012. Proceedings were reinstated on November 15, 2013, but were again suspended on January 15, 2014, to determine Simpson's competency. He was ordered returned to Patton State Hospital on March 19, 2014, after being found not competent. He was then deemed competent on December 23, 2014, and criminal proceedings were reinstated. Proceedings were again suspended on April 24, 2015, but were reinstated June 4, 2015, when he was deemed competent.

The trial court found there was no cause for further doubt about his competency. It reasoned, "that more is required to raise a doubt than mere bizarre actions or bizarre statements or statements of defense counsel that defendant is incapable of cooperating in his defense." Having "reviewed the entire history of Mr. Simpson since he first came to court[,]" the trial court noted he had been sent to Patton State Hospital three times and each time, Patton issued a certification of mental competence within three months of his placement. The trial court added, "One of the things that the doctors have indicated after visiting with Mr. Simpson, they believe that he did or does suffer from some type of mental illness. However, it does not interfere with his competency. They said that they believe that he is malingering his symptoms."

As to the trial court's own interactions with Simpson, "his responses were appropriate to the questions asked" "[a]nd now he is talking with counsel, at least, about offers and what he is willing to take." While the trial court "certainly recogniz[ed] that Mr. Simpson may have some type of mental illness—I don't dispute that at all—but it seems to me he is taking a different tact here—he is taking a different tactic now. He is not only—he is not remaining silent, now he is verbalizing. He is talking. But he is saying he doesn't remember certain things. [¶] So in the mind of the court, I don't find there is substantial evidence at this time to declare a doubt."

Defense counsel then advised the trial court Simpson had not been compliant with his medication and that his bizarre behavior in court was consistent regardless of whether he was being observed for competency or not. The trial court found his failure to take his medication "could be a way to manipulate the system" since he stopped taking them just ten days before trial. The trial court then had a conversation with Simpson in which Simpson nodded or shook his head appropriately in response to the trial court's questions.

During the reading of the charges to the jury, however, Simpson repeatedly interrupted by raising his hand and saying, "I didn't plead not guilty. I'm going to plead something else." He also indicated he was "not guilty by reason of insanity." Simpson later told the trial court he wanted to plead not guilty by reason of insanity and that he would rather go to Patton. Simpson indicated he was afraid to go to state prison and that

was one reason for his conduct. The trial court believed Simpson's response to the court's reading of the charges indicated he was competent. The trial court also discussed Simpson's refusal to bathe and Simpson indicated he understood he would not be able to attend the trial unless he bathed.

B. The Trial Court Did Not Abuse Its Discretion To Deny A Competency Hearing

A defendant is mentally incompetent to stand trial if he "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367, subd. (a).) "Both federal due process and state law require a trial judge to suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial. [Citations.] . . . Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and prior mental evaluations. [Citations.]" (*People v. Rogers* (2006) 39 Cal.4th 826, 847.)

To be entitled to a competency hearing, however, "'a defendant must exhibit more than bizarre . . . behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel. [Citations.]'" (*People v. Lewis* (2008) 43 Cal.4th 415, 524; overruled on other grounds by *People v. Black* (2014) 58 Cal.4th 912, 919.) A defense counsel's expressed belief that his client might be mentally incompetent does not automatically trigger a competency trial. (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 465; *People v. Mai* (2013) 57 Cal.4th 986, 1033.) Instead, "defense counsel must present expert opinion from a qualified and informed mental health expert, stating under oath and with particularity that the defendant is incompetent, or counsel must make some other substantial showing of incompetence that supplements and supports counsel's own opinion. Only then does the trial court have a nondiscretionary obligation to suspend proceedings and hold a competency trial. [Citation.] Otherwise, we give great deference to the trial court's decision not to hold a competency trial." (*Sattiewhite, supra*, 59

Cal.4th at p. 465.) "The failure to declare a doubt and conduct a hearing when there is substantial evidence of incompetence, however, requires reversal of the judgment of conviction." (*Rogers, supra*, 39 Cal.4th at p. 847.)

Likewise, once a defendant has been found competent to stand trial "a [subsequent] competency hearing is required only if the evidence discloses a substantial change of circumstances or new evidence is presented casting serious doubt on the validity of the prior finding of the defendant's competence." (*People v. Medina* (1995) 11 Cal.4th 694, 734 (*Medina*).) In either case, "[w]e apply a deferential standard of review to a trial court's ruling concerning whether another competency hearing must be held." (*People v. Huggins* (2006) 38 Cal.4th 175, 220.) Neither a defense counsel's generic statements that the defendant is unable to assist with his defense nor "bizarre statements and actions" on the part of the defendant are sufficient evidence to require a trial court to hold a renewed competency hearing. (*People v. Marks* (2003) 31 Cal.4th 197, 220; *People v. Jones* (1991) 53 Cal.3d 1115, 1153.)

We conclude there was no substantial evidence defendant was incompetent to stand trial. The record shows he was able to understand the nature of the criminal proceedings. He understood that he could be sent to prison and indicated he preferred to go back to Patton State Hospital instead. He also admitted his behavior was in part due to his fear of going to prison. Moreover, his trial counsel failed to make a substantial showing of incompetence to supplement her opinion. The trial court was not required to conduct a competency hearing, and it did not abuse its discretion in declining to do so. (*People v. Pennington* (1967) 66 Cal.2d 508, 518.)

Simpson contends substantial evidence raised a reasonable doubt about his sanity on the day of trial, despite the finding of competency three weeks earlier. The substantial evidence consisted of his counsel's opinion, his refusal to take his medication, his denial of having been to the state of Washington, his refusal to bathe, and his "gibberish" statements to counsel. When taken in context, Simpson's bizarre behavior was not sufficient to require the trial court to conduct a competency hearing under section 1368. This is because Simpson admitted his behavior, including his outbursts in court, were an

attempt to "[g]o to Patton on the 1387."[8] Simpson also explained to the trial court he did not shower because the showers were cold. Despite his "gibberish" responses to counsel, it was clear upon further questioning that he declined the prosecution's offer. Substantial evidence does not support a reasonable doubt about Simpson's competence.

DISPOSITION

We reverse the trial court's finding that Simpson's prior conviction for robbery in Washington qualified as a serious or violent felony under California law. We remand for a limited retrial on that issue. If the prosecution elects not to retry the issue, then the sentencing enhancements shall be stricken from Simpson's sentence, and the trial court shall prepare and transmit a modified abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.

[8] Section 1387 involves the effect of a dismissal for want of prosecution. Section 1367 prohibits the trial of a mentally incompetent person.